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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Michael E. Moseley, et al. Examiner: William Jung
Serial No. 09.606,137 Group Art Unit: 3737
Filed: June 28, 2000 Docket No. 500.003US1
Title: IMAGING METHOD FOR VISUALIZING IMPLANTED LIVING CELLS

MAIL STOP APPEAL BRIEF - PATENTS

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

SPECIAL COMMUNICATION

Accompanying this Document are replacement pages for a Brief on Appeal demanded by the US Patent and Trademark Office in a Notice of Non-Compliant Brief on Appeal mailed October 6, 2009. **There is, however, clear error in the Notice of Non-Compliant brief, even though one issue in that Notice is correct.**

The Notice states that "Under Appendix heading, grounds of Rejection, it is unclear and/or is not consistent with the grounds of rejection in the Final Rejection mailed 5/15/07 because it does not include rejected claims 60-64. Claims 60-64 are also not part of Claim Sets submitted on 2/26/07 and 8/10/07 and therefore final rejection 5/15/07 does not include claims 60-64.

Although the cover sheet for the Final Rejection indicated recognition of the presence of claims 60-64, there was no actual rejection of those claims. As this PTO error was partially caused by the absence of a copy of claims 60-64 before the Examiner, it is believed that the most fair resolution is to hold claims 60-64 as *de facto* CANCELED.

On Behalf of the Clients**Michael Moseley et al.**

By their representatives

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By: 

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CERTIFICATE UNDER 37 C.F.R. 1.8: The undersigned hereby certifies that this Transmittal Letter and the paper, as described herein, are being sent by facsimile transmission or deposited in the United States Postal Service, as first class mail, with sufficient postage, in an envelope addressed to: Mail Stop Appeal Brief - Patents, Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450 on 5 November 2009

Mark A. Litman
Name
Signature

BRIEF ON APPEAL

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STATUS OF CLAIMS

Claims 5-7, 9, 11-26, 29 and 54-64 are all of the claims remaining in this application, all other claims having been voluntarily cancelled during prosecution of this application, Applicants reserving the rights to file continuation application son the subject matter of those cancelled claims and other subject disclosed but not claimed in this Application.

Claims 5, 6, 13, 14, 17, 18, 20, 21, 25, 26, 54, 55, 57 and 59 have been finally rejected under 35 U.S.C. 102(b) as anticipated by U.S. Patent No. 5,869,463 (Major). **All of these claims are on Appeal.**

Claims 7, 9, 11, 12, 15, 16, 19, 22, 29, 56 and 58 have been rejected under 35 U.S.C. 103(a) as unpatentable over U.S. Patent No. 5,869,463 (Major) in view of U.S. Patent No. 5,497,770 (Morcos et al.) **All of these claims are on Appeal.**

Claim 23 has been rejected under 35 U.S.C. 103(a) as unpatentable over U.S. Patent No. 5,869,463 (Major) in view of U.S. Patent No. 6,567,684 (Chenevert). **All of these claims are on Appeal.**

Claim 24 has been rejected under 35 U.S.C. 103(a) as unpatentable over U.S. Patent No. 5,869,463 (Major) in view of U.S. Patent No. 6,140,116 (Dinsmore). **All of these claims are on Appeal.**

Claims 60-64 were inadvertently dropped from claims in a first Brief on Appeal filed 27 January 2007, and in an amendment filed 26 February 2007 after withdrawal of the Final Rejection by the US Patent and Trademark Office. These claims must therefore be considered *de facto* CANCELED and are so noted in the set of claims on Appeal. Claims 60-64 are therefore NOT on Appeal and are Canceled.

Claims 5-7, 9, 11-26, 29 and 54-59, all of the pending claims in this Application are On Appeal in this Appeal.

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volumetric decrease of cell population.

60-64. (CANCELED)